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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,396	03/16/2001	Rainer Anderlik	49256	3913

26474 7590 06/11/2004
KEIL & WEINKAUF
1350 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/762,396

Applicant(s)

ANDERLIK ET AL.

Examiner

Neil Levy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim ~~1-16~~ 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Poughalan et al. 4734278 in view of Klimesch et al. 5163994.

Poughalan, of record provides polymeric odorous articles (col. 3) including thermoplastic EVA and PVA as moldable articles, or cast, or extrusion in order to provide long lasting efficacy of shaped articles, including insecticidal articles (Example 3). However, crosslinked of Tg less than 10⁰C polymeric powder mixed with insecticide, were not disclosed as mixed with the EVA/PVA or other thermoplastic polymer. Klimesch provides this starter, applicable to use as insecticidal articles. The prior art is known to produce thermoplastic articles, but long duration escapes them (col. 1, lines 49-65). Klimesch provides microparticles of crosslinked styrene (col. 2, lines 33-49). Examples are at col. 3, lines 50-68.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize long lasting insecticidal articles, to prepared in Non-critical manner of Poughalan, but modified with inclusion of odorant pesticides of Klimesch, encapsulate to reduce destruction.

Applicant has not provided any objective evidence of criticality, non-obvious or expected results that the Preparation provides any greater or different level of prior art expectation as claimed. The amounts, and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular

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species and application method of interest, reduction of toxicity, enhanced, and prolonged, or synergistic effects, and the use of ingredients for the functionality for which they are known to be used is basis for patentability.

The instant invention provides will known old art recognized compounds, with known art recognized effects, applied by well known art recognized methods to control pests.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce Hess whose telephone number is 571-272-1525. The examiner can normally be reached on Monday thru Friday from 6:30 to 7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL S. LEVY
PRIMARY EXAMINER

LevyLR
June 3, 2004